IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

WP(C).No. 332 of 2007(M)

PETITIONER:

ALEX MATHEW,
T.C.NO.4/1074, KAIPPALLIL,
KOWDIAR, THIRUVNANTHAPURAM.

BY ADV. SRI.D.SAJEEV

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY THE SECRETARY,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SECRETARY,
CORPORATION OF THIRUVNANTHAPURAM,
CORPORATION OFFICE, PALAYAM,
THIRUVANANTHAPURAM.

3. THE SECRETARY,
TRIDA,
VAZHUTHACAUD, THIRUVANANTHAPURAM.

4. ABDUL NAZAR, T.C.16/127,
ESWARAVILASOM ROAD, VAZHUTHACAUD,
THIRUVANANTHAPURAM.

G.P. SMT.T.B.RAMANI
BY ADV. SRI.K.A.JALEEL, SC., TRIDA
SRI.P.GOPALAKRISHNAN NAIR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C.KURIAKOSE, J.

W.P.(C)NO. 332 of 2007

Dated this 21st day of February, 2007

JUDGMENT

The petitioner, who is aggrieved by the approval of Ext.P2 plan and grant of Ext.P3 permit in favour of the 4th respondent by which the 4th respondent has been permitted to convert his residential building to what the petitioner describes as commercial hotel complex in an area which is specifically earmarked for a residential zone by the 3rd respondent, has filed this writ petition seeking the following reliefs:

i). Quash Ext.P3 permit on the ground that it is against the approved master plan of the Thiruvananthapuram Development Authority.

ii). Issue a writ of mandamus commanding the 2nd respondent to reconsider the entire matter afresh after taking note of the decision that is reported in 2005 (4) KLT 1027.

iii). Issue a writ of mandamus directing the 2nd respondent to consider and pass orders on Ext.P1 representation in accordance with law.

2. Ext.P2 is a copy of the plan in respect of which Ext.P3

permit has been issued to the 4th respondent. The petitioner submits that he got Ext.P2 from the public Information Office. Ext.P1 is a copy of the representation submitted by the petitioner before the 2nd respondent. No action has so far been taken on Ext.P1, the petitioner complains. Ext.P4 is a copy of the application submitted by the 4th respondent for permit. It is submitted that occupancy as per this permit application is mentioned as a special residential zone. Relying on the judgment of this court in **Sayeesh Kumar v. State of Kerala (2005 (4) KLT 1027),** the petitioner contends that one development scheme has been approved and published in the gazette stating that a particular area has been earmarked as residential zone. Ext.P3, to the extent it permits the 4th respondent to construct the hotel complex in a purely residential zone, is ultra vires. The petitioner contends that the 2nd respondent is not empowered to grant permit to convert a residential building to a non residential building in a residential zone approved by the Development Authority. The petitioner further contends that even the plan which has been approved is against the requirements envisaged in Kerala Building rules and that the 4th

respondent had managed to get the plan and permit styling the construction as only an extension to the existing building. Ext.P2 will show that the extension is for converting a residential building to a commercial building and the same is not permissible.

3. The 4th respondent beneficiary of the permit has filed a detailed counter affidavit refuting the grounds raised by the petitioner and denying all the allegations. It is conceded that the 4th respondent has purchased the building bearing Door No.4/1071/2 together with land upon which the building is situated. He denies the allegation that he is constructing the ground floor for housing a bakery, the first floor as an auditorium and the 2nd floor as a restaurant and thus commercial building is being built is not correct. It is stated that the plan itself will clearly show that the ground floor is being constructed as a parking area the first floor as a conference hall and the roof top as a dining hall. The 4th respondent assures that he is not constructing the commercial building, but he is only constructing a special residential building even as per the building rules. The

4th respondent refers to Rule 30(2) of the Kerala Municipalities Act which deals with classification of buildings into various groups on the basis of occupancies and submits that Group A2 – Special residential buildings are described in Rule 30(3)(b) of the Municipality Building Rules which shall include all lodging or rooming houses, dormitories, tourist homes, hostels, (hotels exceeding 150 sq. meters floor area with or without conference halls, community halls, dining halls, or assembly rooms, Creches, day care centers, children's nursery, reading rooms, libraries and educational buildings not exceeding 150 sq. meters floor area are also included in this group. Counter affidavit points out that in Ext.P4 application for permit, their request for non family residential buildings special residential (hotel). Rule 30 (3) (b) clearly specifies that hotels exceeding 150 sq.mrs, floor area with or without conference hall, dinning hall or assembly hall will definitely be included in Group A2-Special Residential Building. The permit is granted since the hotel is categorized in the above rule of building rules as special residential building which are permitted to be constructed in a residential zone. Counter affidavit refers to Rule 53 of the building rules and submits that

both residential (A1) and Special Residential (Group A2) can be together said to be called residential occupancy which can be permitted to be constructed in a Residential Zone. The counter affidavit proceeds to deny the allegation regarding the violation of rules. It is stated in the counter affidavit that the principles laid down by a Division Bench in 2005 (4) KLT 1027 has no application at all in this case since there is no question of any exemption being sought for from zoning regulation in the matter of the construction .

5. As directed by this court the Standing Counsel for the Trivandrum Corporation has field a detailed statement in which the stand taken by the 4th respondent is supported. It is specifically contended that the Corporation has not violated any of the directions issued by the court in 2005 (4) KLT 1027 and that there has been no violation of any of the rules in the Kerala Municipalities Building Rules by the 4th respondent.

6. I have heard the submission of Sri.D.Sajeev, the learned counsel for the petitioner, and Sri.A.Jaleel, the learned counsel for the 3rd respondent TRIDA, Sri.P.Gopalakrishnan Nair, the

learned counsel for the 4th respondent and Sri.N.Nandakumara Menion, the learned counsel for the 2nd respondent Corporation. The learned counsel would make submissions on the basis of the pleadings of their respective clients.

Having considered the contentions raised by the 4th respondent in the context of Rules 30(2) and 30 (3)(b) of the Kerala Municipalities Building Rules, I am of the view that there is no merit in the grounds raised by the petitioner. The writ petition fails. It is made clear that the 4th respondent will have the permission to go on with construction of the special residential building construction of which he has presently taken up. The building to be constructed by the 4th respondent on the strength of the permit will be a special residential building for all purposes of law and that being so, there is no question of the judgment of the Division Bench of this court reported in 2005 (4) KLT 1027 having any application in this case.

The writ petition will stand dismissed, but without any order as to costs.

PIUS C.KURIAKOSE
Judge

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